

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

STEPHANIE MCCUTCHEON,

Plaintiff,

v.

ENLIVANT ES, LLC, a foreign limited
liability company, d/b/a SEASONS PLACE
ASSISTED LIVING FACILITY,

Defendant.

Civil Action No. 5:21-cv-00393
(formerly Civil Action No. CC-13-2021-
C-48 in the Circuit Court of Greenbrier
County)

**DEFENDANT ENLIVANT ES, LLC D/B/A SEASONS PLACE ASSISTED
LIVING FACILITY’S NOTICE OF REMOVAL**

Under 28 U.S.C. §§ 1332, 1441, and 1446 Defendant Enlivant ES, LLC (“Defendant”) (incorrectly named in the Complaint as Enlivant ES, LLC d/b/a Seasons Place Assisted Living Facility) gives Notice of Removal of the above-captioned matter, Civil Action No. CC-13-2021-C-48, formerly pending in the Circuit Court of Greenbrier County, West Virginia, to the United States District Court for the Southern District of West Virginia. In support of removal, Defendant states as follows:

I. Factual Background

1. On or about June 3, 2021, Plaintiff Stephanie McCutcheon (“Plaintiff”) filed a civil action against Defendant in the Circuit Court of Greenbrier County, West Virginia.
2. The complaint was served on Defendant via the West Virginia Secretary of State as attorney-in-fact on June 9, 2021.
3. Defendant has timely filed this notice of removal within thirty (30) days of receipt of Plaintiff’s Complaint.

4. Plaintiff's Complaint purports to set forth a claim alleging retaliatory discharge in contravention of public policy as recognized in *Harless v. First Nat. Bank of Fairmont*, 246 S.E.2d 270 (1978). Specifically, Plaintiff alleges that she was terminated due to her refusal to be vaccinated with the COVID-19 vaccine. She was separated from her employment on or about June 1, 2021.

5. No further substantive proceedings have taken place in this action since the receipt of the Summons and Complaint by Defendant.

6. Under 28 U.S.C. § 1446(a), copies of all process and pleadings served upon Defendant, along with a copy of the State Court Docket Sheet, are attached as **Exhibit A**.

II. Removal to This Court is Proper Based on Diversity Jurisdiction

7. This action is removable under 28 U.S.C. § 1441(b) because the United States District Court has original jurisdiction under 28 U.S.C. § 1332(a), which provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and is between – (1) citizens of different states.”

8. **The amount in controversy exceeds \$75,000.** Plaintiff's Complaint does not claim a specific sum, however, Plaintiff seeks damages and punitive damages. (Ex. A, Complaint Prayer ¶¶ 3-4.) Accordingly, while Defendant denies the validity of Plaintiff's claims as well as Plaintiff's entitlement to the damages she seeks, Defendant acknowledges that, based on the value of the relief sought by Plaintiff in this case, Defendant believes the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000, thus exceeding the jurisdictional amount of \$75,000 set forth in 28 U.S.C. § 1332(a).

9. **This action is between citizens of different states.** Plaintiff's Complaint alleges that Plaintiff is an adult individual who resides in West Virginia. (Ex. A, Complaint ¶ 1.)

10. Defendant is not a citizen of the State of West Virginia.¹ It is Delaware LLC, and its principal place of business and corporate headquarters are located in Chicago, Illinois. *See* 28 U.S.C. § 1332(c) ("A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.")

11. Therefore, this Court has original jurisdiction, under 28 U.S.C. § 1332 because the parties are completely diverse, and the amount in controversy exceeds \$75,000. Both the complete diversity and the amount in controversy in excess of \$75,000 exist as of the date of this Notice of Removal.

12. For the reasons outlined above, Plaintiff's claims are an action over which the District Court of the United States has original jurisdiction pursuant to 28 U.S.C. § 1332, and is therefore properly removable pursuant to 28 U.S.C. § 1441(a) to the District Court of the United States embracing the place where such action is pending.

III. Conclusion

13. Under 28 U.S.C. § 1446(d), a copy of this Notice of Removal, with a Notice of the Filing of the Notice of the Removal, will be sent to counsel for Plaintiff and filed with the Clerk for the Circuit Court of Greenbrier County, West Virginia. A copy of the Notice of Filing of Notice of Removal is attached as **Exhibit B**.

14. By filing this Notice of Removal, Defendant waives no available defenses.

¹ Enlivant ES, LLC, a foreign limited liability company, d/b/a Seasons Place Assisted Living Facility is not a properly named Defendant in this matter. Defendant believes that the proper parties are Enlivant AID II ES, LLC and Enlivant Master Management Company, LLC. However, both of these entities are foreign entities as well, as they are Delaware LLCs with a principal place of business in Chicago, Illinois.

WHEREFORE, Defendant respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove it from the Circuit Court of Greenbrier County, West Virginia to the United States District Court for the Southern District of West Virginia.

Dated: July 9, 2021

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: /s/Bethany S. Wagner
Bethany S. Wagner
WV 11341
One PPG Place, Suite 1900
Pittsburgh, Pennsylvania 15222
412-315-6040
bethany.wagner@ogletree.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2021, I filed the foregoing via the Court's CM/ECF system and served the foregoing via U.S. First Class Mail, postage pre-paid, to the following:

John H. Bryan, Esq.
411 Main Street
P.O. Box 366
Union, WV 24983

Attorney for Plaintiff

/s/ Bethany S. Wagner

Bethany S. Wagner, Esq.
Attorney for Defendant

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